

The Policy Gap Series

Corporate Social Responsibility and the Mining Sector in Southern Africa

A Focus On Mining In Malawi, South Africa And Zambia

The Bench Marks Foundation



Contents

Foreword	3
Introduction	4
Background	4
The Bench Marks Research Project	5
The Aims of the Research	6
Research Procedures	6
Country Reports	7
Malawi	7
South Africa	13
Zambia	22
Conclusion	27

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Foreword

The Southern African Development Community (SADC) region is a mosaic of countries all at different developmental and political stages. The region holds about 50% of Africa's total mineral wealth.

The mining sector in Southern Africa is going through a massive growth period in the light of rising mineral and commodity prices. Political leaders in the subcontinent are implementing a number of strategies aimed at creating a friendly investment climate conducive to exploration and mining activities in the region. However, instead of providing more negotiation power to the SADC countries, mining multinational companies in the region have implemented a divide and rule strategy to seek out the country with the poorest mining legislation.

There are low levels of accountability, transparency and commitment to all aspects related to sustainable development and corporate social responsibility in the mining arena of the SADC region. Multinational mining companies need to address their corporate social responsibility programmes to focus on the real sustainable development of communities rather than as publicity exercises.

The research conducted by the Bench Marks Foundation on mining in Southern Africa is useful and important in that it aims to provide SADC governments, mining companies and local mining community stakeholders with information and guidance on issues to consider in the process of empowerment and sustainable development through corporate social responsibility. At the same time it also alerts the global world of the human rights shortfalls that are being practised in the SADC mining communities.

The Rt. Rev Dr. Jo Seoka
Chairperson
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Johannesburg
June, 2008

Introduction

The Bench Marks Foundation is an independent organisation monitoring corporate performance in the field of corporate social responsibility (CSR) with the focus on sustainability and economic development. The organisation encourages CSR that goes beyond reporting and reporting mechanisms and focuses on the gap between policy and practice, thereby assisting civil society groups and corporations to move beyond philanthropy to more strategic interventions that benefit both the corporation and society. Central to our agenda is how CSR is integrated into companies' operations and ensuring that it is at the core of every decision-making process.

Background

The unique characteristics of the mining environment in the Southern African Development Community (SADC – established in 1980) are that mining communities are mainly isolated, originally rural with high illiteracy rates and very dependent on the mining companies for their livelihood and development. The rural environment often becomes barren and is associated with ugly landscapes caused by large-scale excavations. In addition, communities are often exposed to toxic environmental hazards from mining operations.

Although some mines can reach a life span of nearly forty years, mining is by its nature a temporary activity because of its dependence on available mineral deposits. It is a fast growing industry and is associated with high earnings for the mining corporations. Local communities on the other hand are usually unable to respond effectively to the developmental changes that mining operations represent. This results in a rapid change from an agricultural-based society to a cash-dependent environment with fewer agricultural opportunities and communities' ability to be self-reliant on their own food production compromised.

Mining communities throughout the SADC region are characterised by poor environmental as well as social conditions. Sound eco-systems in most mining environments are seriously threatened by mining houses' poor management of the environment. Social conditions in mining communities show increasing poverty, unemployment, prostitution, poor health, inadequate housing and infrastructure, and the high influx of unaccompanied documented and non-documented migrants.

Despite political reform in the region these environmental, social and economic conditions still persist in most of the mining communities. Globally and nationally there has been pressure on corporations to be more accountable and transparent about their actions in the communities they operate. This requires that companies not only focus on the profitability and production of the company, but direct the focus of their core business to corporate social responsibilities which implies being involved in sustainable development in the communities. Policy interventions have their own limitations, and the fact that many mining operations still confuse corporate social responsibility with philanthropy and/or hand-outs to communities, has resulted in numerous problems associated with omissions, deliberate cutting of corners and overt and covert misrepresentations.

The Bench Marks Research Project

The Bench Marks Foundation's research on *Corporate Social Responsibility and the Mining Sector in Southern Africa* is a collaborative project with the Peace, Principles and Participation (PPP) Network and is supported by the Netherlands Institute for Southern Africa (NIZA).

The focus of the research is on the legislative environment and the policies and practices of mining corporations in Southern Africa. The overall research project is being conducted in phases with different countries highlighted in each phase. This is the first in the series and focuses on mining in Malawi, South Africa and Zambia. Other SADC countries to be included are Angola, the DRC and Mozambique.

This research project arises from the extensive research done in 2007 by the Bench Marks Foundation on platinum mining in Rustenburg. The study was entitled: "*The Policy Gap – A review of the corporate social responsibility programmes of the platinum industry in the North West Province*". The launch of this study saw the creation of community forums and a commitment by the mining houses to further engage with communities and the Bench Marks Foundation.

International best practice and benchmarking conceptualised and monitored by the Bench Marks Foundation as specified in the *Bench Marks framework, Principles for Global Corporate Responsibility: Bench Marks for measuring Business* are key principles in the design and execution of the research.

Mining related developmental issues that are raised by the research include the following: health and safety, HIV/AIDS, security, education, environmental management, migrant and settlement patterns, poverty eradication, job creation, local economic development, gender, HIV/AIDS, measurement of development needs of communities, etc.

David van Wyk (Mudjadi Trading (PTY) Ltd) in cooperation with Prof Freek Cronjé (North West University), Mr Johann van Wyk (North West University) and Ms Charity Chenga (University of Kent, UK) conducted the research.

The Aims of the Research

The aims of the study are to:

- Give a historical overview of the mining sector in Malawi, Zambia and South Africa
- Analyse the mining legislative framework as well as the implementation thereof in each country
- Reveal critical challenges in the mining sector of each country
- Highlight key issues in the mining environment in the SADC region against the background of the CSR practises of mining companies in relation to the dimensions of sustainable development
- Critically analyse the findings in terms of the gaps between policy and practice; practice and human rights and policy and human rights
- Make practical recommendations in order to bridge the above-mentioned gaps through sound CSR practices.
- Advocate for developmental benefits at grassroots level.

Research Procedures

The three basic research procedures mainly used in the research study were the historical procedure, survey procedure and historic-comparative procedure.

The key issues that came to the fore from the research are generally categorised under the three dimensions of sustainable development (economical, environmental and social). Integrated within the findings of the research are certain relevant *Principles*, *Criteria* and *Bench Marks* from the *Principles for Global Corporate Responsibility: Bench Marks for Measuring Business Performance*, which serve as an indication as to how (and in which areas) mining companies can still improve on their CSR performance.

An additional measure against these criteria and benchmarks is given through the presentation of results that were obtained in the 'CSR Community Assessment Tool' used in the research studies. This was done in order to contextualise the CSR issues that arose in the study in terms of international best practice.

Country Reports

Following is a brief overview of the critical challenges found in each country and a summary of the issues relating to applicable legislation, corporate social responsibility, sustainable development, health and safety and engagement between communities and mining operations.

A comprehensive Desktop Report on the mining activities in the different countries is available on disk from the Bench Marks Foundation office.

MALAWI

Due to mainly conflicting interests between civil society groups in Malawi, the empirical research part of the study was hampered. The Desktop Report outlines a number of critical areas including the following critical challenges:

- Malawi needs to urgently review its outdated mining and associated legislation and regulatory regime and find a way out of the parliamentary political impasse it finds itself in.
- Malawian civil society structures need to be strengthened in order to provide an alternative point of reference for communities in the face of rampant mining exploration and development in ecologically sensitive areas such as the escarpment down to the rift valley.
- Standard Bank financed the Paladin Kayelekera Project pointing to South African banking and financial services bankrolling mining projects throughout Africa in general and SADC in particular. Pressure must be put on these institutions to ensure socially and environmentally sound investment.
- The international and environmental law implications of mining in ecologically sensitive areas such as river catchment areas, fish spawning areas and brittle sandstone escarpment areas must be considered before mining is allowed. Noting that mining in the escarpment runoff areas to Lake Malawi will have implications not only for Mozambique and Tanzania, but also for the interconnected great lakes of Africa that fed into the Nile River.

- Malawi urgently needs an organised labour force in the mining sector, wages are extremely low and working conditions are appalling – there is need to form a national union of mineworkers.
- The health, social and environmental impact of mining would make the opportunity cost of mining as against agriculture very expensive, the Malawian government needs to carefully consider such costs and the calculate whether the cost of mining to the country in general makes the potential income from mining really as attractive as it is being presented by corporations.

Legislative Overview

Mineral activities in Malawi are covered by the Mines and Minerals Act, 1981, the Mines and Minerals (Mineral Rights) Regulations, 1981 and the Petroleum (Exploration and Production) Act of 1983. The Mines and Minerals Act of Malawi was passed on 1 July 1981 during Banda's one-party regime and thus relates to a time which bears little relevance to the present. In those days, it was the norm to vest everything in the then life president (Dr Banda), who viewed Malawi as his personal empire. Since this act has not been amended, all minerals are therefore still vested in the president on behalf of the people of Malawi.

After Malawi's transition to a democratic dispensation in 1994 and the adoption of a new constitution in 1995, a review of the existing environmental situation was undertaken. Environmental provisions were subsequently inserted in the Mines and Minerals Act, including the stipulation that an environmental impact assessment (EIA) be submitted to the Department of Research and Environmental Affairs for review with each mineral rights application. However, the existing pieces of legislation were reviewed and/or amended in a piecemeal manner. In other words, the Mines and Minerals Act was amended merely to include a semblance of environmental concern, but no fundamental, substantive changes were made to reflect new developments and realities – both domestic and international.

In 2004, President Bingu Mutharika won elections for the United Democratic Front (UDF), before crossing the floor with 70 members of parliament to set up the governing Democratic Progressive Party (DPP), thereby forming a minority government. The remaining UDF members immediately took court action against the President seeking to declare the floor crossing illegal. On 16 June 2007 Malawi's Supreme Court has ruled that the speaker of parliament can expel MPs who cross the floor and join other parties.

However, Malawi is too poor to hold new elections. This has meant that the country's parliament has been unable to sit since 2004, leaving the President and his executive without effective oversight. The President is therefore free to dish out mining and exploration licences without having to account for his decisions to the parliament or the public, regardless of whether proper Environmental Impact Assessments, Social or Economic Impact Assessments have been done.

Corporate Social Responsibility

Unlike South Africa, mining corporations in Malawi are not encumbered by any legislation, charters or empowerment programmes. Given that the mining industry is in its infancy, this would be the opportune time to ensure that a proper social, economic and environmental regime is effected. However, outdated mining legislation, the parliamentary impasse and the country's seeming eagerness for foreign investment will most probably see Malawi making all the mistakes of its neighbours in making mining corporations accountable and responsible.

Lolwane Matonga warns that: *“The new wave of economic exploitation of rich African resources is through neo-colonialism with its language of globalisation, foreign investment, private sector development and liberalisation. Government should therefore be very careful of the way it negotiates these mining agreements and other foreign investment initiatives. They should avoid negotiating out of desperation as if minerals are going to run away”.*

Sustainable Development

Economic dimension

During the review period, mining and processing of various indigenous minerals contributed minimally to Malawi's economy through income generation, employment opportunities, import substitution and mineral exports. Mineral exports amounted to some K29 million; a decrease of about 30% over the previous year. On the other hand, coal and rock aggregate (quarry stone) contributed the largest monetary value in employment opportunities, other than agriculture, which contributes upwards to 48% to GDP.

The Department of Mines collects revenue from the Mining Industry in the form of royalty on minerals mined and various mineral licence fees. During the review period the department on behalf of Government collected a total of K11.04 million (ZAR581,

052.63). The Malawi Revenue Authority collects surtax from the minerals industry as well as Commissioner for taxes in the form of corporate tax. Revenue to the Malawi Government will remain minimal given the eagerness for the government to accommodate mining companies like Paladin, *which intends mining uranium in Kayelekera, and will get a 100% capital write off, a reduction in corporate tax from 30% to 27.5% and a scrapping of the 10% resource rent tax. The company will also be exempt from the standard 17.5% import VAT or duty and a reduced royalty rate from 5% to 1.5% in the first three years and 3% thereafter.*

There is no need for the Malawian government to be so accommodating as the present market conditions which favours the suppliers of minerals and raw materials; all African Governments with minerals based economies are in a position to demand much better deals from and to impose much stricter conditions on mining corporations.

Environmental dimension

Significantly, Malawian mining and environmental legislation requires consultation with communities, but does not require agreement with or even consideration of the opinions, fears or wishes of such communities. Thus if mining companies can show “evidence of consultation and information dissemination”, their prospecting and mining licenses will be granted. In other words, communities are completely disempowered and marginalised when it comes to mining.

Malawi is considered one of the poorest countries in the world and therefore least prepared for a major corporate invasion to mine its territory, more especially with a heavy focus on uranium, because:

- It does not have the physical (human) and material (financial and otherwise) resource capacity to effectively monitor and control something as controversial as uranium mining in terms of providing adequate security (international terrorism), impact on the environment (radiation monitoring), impact on community health and welfare.
- Kayelekera and other uranium mines in the escarpment dropping off into the rift valley to the shores of Lake Malawi will impact on the water quality and streams feeding Lake Malawi given the geography and geology of the area. Malawi would do well to look at the impact of uranium mining on the fish industry in Canada. In Northern Saskatchewan, Canada, where the world's largest and most concentrated known uranium reserves are located, routine releases and

accidental spills of contaminated water from mining and milling operations have poisoned major fisheries and threatened the health and livelihood of indigenous communities. If uranium mining has destroyed the fishing industry in a first world country such as Canada, what chance do African countries such as Malawi have of escaping the same fate?

- Malawi will be unable to medically deal with a uranium mining disaster.
- Malawians living in Kayelekera and Karongo will not receive adequate medical care from the long term effects of uranium mining should radiation leakage occur (cancer).
- Malawians living in Kayelekera and Karongo will have no recourse in the case of birth defects and disabilities commonly associated with communities living in proximity to uranium mining operations.

Social dimension

Malawi is a largely rural country, with the vast majority of the population being dependent on agriculture and fish from Lake Malawi. It is a country in which there is already tension between poor rural communities and big agribusiness concerns over land. The land question has never been resolved and it is a major political gambit in every election. The rapid expansion of the mining industry will only aggravate land tensions. Surface and ground water pollution will further exacerbate the plight of rural communities and could pose a serious threat to food security in Malawi. The Paladin case study has shown that:

- Mining companies communicate and publish documents such as EIA's in English only, thus excluding non-English speakers from processes affecting them.
- Local communities lacked the technical expertise and knowledge to effectively interact with corporate communications and therefore engage meaningfully on issues affecting communities.
- The legislative process excludes the requirement of a Social Plan (as required in South Africa, before mining licences can be issued).
- There is no legal requirement for corporations to avail full reports such as EIA's to the public and this excludes them or their technical representatives from detailed background information and source materials against which the public could test underlying assumptions and ultimate conclusions.
- The company in its EIA over emphasised purported economic benefits of the project while downplaying potential negative social and environmental impact.

- Site occupation and population relocation occurred chronologically long before the EIA was submitted. In other words, Paladin considered the granting of the licence a foregone conclusion and a mere formality.
- Two independent reviews of the EIA were conducted, one with the Australian university and the other at North West University. Both assessments found the EIAs lacking in credibility.

The families relocated at Kayelekera were each given US\$95 (ZAR648 or MK12,312). This paltry sum by regional or global standards should forewarn the local population about the tight-fistedness of this particular company, particularly when considering the promised economic benefits that are supposed to derive from the project.

The Paladin investment has already created divisions between civil society organisations themselves and between government and members of the community, between government and the churches and between Malawians from the south of the country and those from the north.

Health and Safety

Health and Safety falls under the Ministry of Labour and Manpower Development and is regulated by the Occupational Health, Safety and Welfare Act (Number 21 of 1997). Health and safety standards at Malawian mining operations are rudimentary. It is doubtful that Malawi will have the necessary human and material resources or experience to effectively regulate a rapidly growing mining industry.

Even more worrisome will be community health and safety. Malawi is in the Guinness Book of Records for having the worst doctor patient ratio in the world. Throughout Africa mining has been accompanied by increases in HIV/AIDS, other sexually transmitted diseases, substance abuse, particularly alcoholism, gender violence, socio-cultural disruption and a decline in mental health.

Community Engagement

There are no legal obligations on mining corporations to engage with communities. The only reason why such engagement took place at all in the case of Paladin in Kayelekera was because of pressure from civil society structures on both government and the corporation. Despite this pressure the community engagement was treated as a mere formality. The power imbalance that exists between poor semi-literate rural communities

and mining corporations are of such a nature that the outcome of these engagements almost invariably favours the corporation.

Labour and Migrant Issues

Malawian people have a long experience with mining given that Malawi was for many years the main source of labour for South African mines. Historically, Malawians also supplied labour to mines in Zimbabwe and Zambia.

The mining industry being a new and still relatively small industry only employs 2,417 people (a 20% increase over the previous year). The coal sub sector accounted for 20% of the total work force in the industry and together with quarry stone, agricultural lime and cement limestone accounted for 42% of the workforce. During the year under review, about MK122 million (ZAR13,065.33) was paid in salaries and wages by the Mining Industry; an increase of 35% over the previous year reflecting increasing employment in the industry as well as normal annual wage increases. The Coal Mining and quarry aggregate sub-sectors account for the largest portion of the wage bill.

As per capita income of MK5,362 (ZAR32,266.59) was realised translating into 23% increase over the previous year. *This translates into an average monthly income of MK4,196.33 (ZAR220.88) which is less than one fifth of what a South African mine worker earns.*

SOUTH AFRICA

A review of the corporate social responsibility programmes of the platinum (Limpopo), gold and uranium mining (North West, Gauteng), and coal mining (Mpumalanga) sectors in South Africa was conducted during 2007 and 2008.

Overview

Gold has always been the mainstay of the South African economy and today's government is as entwined with the interests of the gold mining industry as it was in the early 20th century. Mining corporations continue to assume little responsibility for the health, education or housing of the families of their black employees while operating in monopolistic conditions and creating super profits. The impact and consequences of mining on local farmers and traditional communities on whose land minerals are found is

often overlooked. The research report points out that any destruction to land, water and health and safety can never justify the benefits mining brings.

Coal is the second biggest mining operation in South Africa and South Africa is the second biggest coal exporter after Australia as well as the lowest cost producer after Indonesia. Much of our coal is in Mpumalanga and this is the country's most productive coalfield. Coal, South Africa's black gold, has become critical in the development of the South African black middle class, the so called "black diamonds". While the world is faced with global warming, South Africa's government has embraced coal as an essential part of its social engineering project to create a black middle class, no matter what the environmental costs.

The involvement of current and former government officials as shareholders, board members or managers in mining companies is causing tensions and conflict and is undermining the trust of communities in the various spheres and institutions of government.

South Africa is one of the world's largest emitters of CO₂ in terms of population size. Old coal fields pose a huge contamination problem of heavy metals seeping into water resources, causing acid mine drainage or acidic water. All of this not only impacts on South Africa's scarce water supplies, but also on rural communities, local farmers and agriculture.

The following critical challenges were outlined in the various mining sectors:

Gold and Uranium Mining in Gauteng and the North West

- The safety record of the ultra-deep-level mines leaves much to be desired.
- The Mooi River, the Crocodile River, the Vaal River and the Wonderfontein Spruit are all under severe stress as a result of mining and industrial activities.
- The impact of mining on ground water in all the areas under consideration is severe as is the impact of mine waste facilities such as tailings dams on air quality.
- Silicosis is very prevalent among mine workers and this raises serious concern.

Platinum Mining in Limpopo

- Limpopo is a water scarce province. The damming up of the rivers by the Department of Water Affairs and Forestry in partnership with mining corporations is limiting the access of rural communities to water, and suggestions that

communities pay for piped water from dams limit community access further as some communities may not be able to afford to pay for this water.

- Acid mine drainage is a threat to streams and rivers in Limpopo.
- Communities complain that since the commencement of mining their boreholes, wells and springs have dried up.
- The conflict between mining corporations who claim prospecting and mineral rights, and communities who claim communal or commercial agricultural and ownership rights of land is starting to resemble then 19th century wars of land dispossession. The land question needs to be urgently resolved.
- The severely disruptive impact of mining on communities in terms of community health and psychology must be dealt with.
- The mining companies engage in corporate social responsibility programmes either because they are obliged to, or because they consider it good publicity. They do not do so because they consider communities to be partners, or because they realize the severely disruptive impact of mining on communities. Mining companies behave as if they are 'entitled' to the minerals and treat communities as if they are an obstacle to this entitlement.
- The involvement of current and former government officials as shareholders, board members or managers in mining companies is causing tensions and conflict and is undermining the trust of communities in the various spheres and institutions of government.

Coal Mining in Mpumalanga

- The impact of coal mining on the lakes district of Mpumalanga is severe. The Olifants River is considered to be highly stressed as a result of acid mine drainage. The condition of the Olifants River will impact on the Limpopo River thereby affecting the Kruger National Park, Mozambique and Zimbabwe.
- Coal mining and the burning of coal for electricity will also have severe impacts on air quality on the South African Highveld.
- Many coal mines operate without water licenses and are consuming agricultural water illegally.
- There are ongoing conflicts between mining corporations on the one hand and farmers and communities on the other over land and water.
- The unethical involvement of government officials in mining companies is perceived to undermine the democratic consultation processes with communities.

Legislative Overview

Changes to the National Environment Management Act to effectively remove environmental oversight and regulation over the mining industry from the Department of the Environment and Tourism and placing it under the auspices of the Department of Minerals and Energy is of major concern to both environmentalists and to communities. These changes came about as a result of pressure brought by the industry on the National Government resulting in an effective investment boycott between 2005 and 2006.

There is a strong perception that the manner in which exploration and mining licenses are issued in terms of the Mining Petroleum Resources Development Act (MPRDA) are unconstitutional. No communities have tested this in court, however most communities are too poor to take super rich mining corporations on in a drawn out legal battle. Clearly the class based judicial system in South Africa serves those with the requisite financial backing. Section 25 (1) of the Constitution says that property rights may not be interfered with unless it is done under a 'law of general application' meaning that the law does not target named or easily identifiable individuals or groups. The same section also prohibits the arbitrary deprivation of property.

Section 25(2) deals with the expropriation of property noting that this requires a "law of general application". Expropriation also requires a 'law of general application.' Expropriation can only be done for a public purpose or in the public interest. The public interest 'includes the nation's commitments to land reform, and to reforms to bring about equitable access to all South Africa's natural resources (section 25 (4)). Should land be expropriated there must be just and equitable compensation for individuals or communities whose land has thus been expropriated.

In the case of mining the law of general application refers to the MPRDA. However, the law comes short in that in the case of mining two clearly identifiable groups almost invariably suffer the loss of their land, these two groups are commercial farmers, or rural communities who depend on subsistence agriculture to survive. Commercial farmers are essential to the food security of the nation. Not only do they lose valuable agricultural land to mining, but also the kind of environmental degradation of land, water and air that makes farming almost impossible.

There is significant evidence of collusion between the state and mining companies to undermine the constitutional land rights of communities as was shown in the case of the *Alexkor Ltd and the South African Government v the Richtersveld Community and Others*. In this case the State and Alexkor argued that 'there are no grounds to claim the right to aboriginal title or ownership based on indigenous rights in South Africa. On October 2003 the Constitutional Court decided that the Richtersveld community had a right under section 2(1) of the Restitution of Land Rights Act to restitution of the right of ownership of the subject land (including its minerals and precious stones), and the exclusive beneficial use and occupation of the land. The Richtersveld finding surely contradicts the ease with which mining corporations are pushing of traditional communities from their land using the instrument of the MPRDA.

The complete incapacity of the Department of Minerals and Energy to monitor, oversee, or regulate the industry is leading to the systematic destruction of the environment in general and of both ground and surface water resources in large parts of the country. This incapacity of the DME has also impacted on mine safety, with safety spiraling out of control at the end of 2007.

Corporate Social Responsibility

The industry has successfully lobbied to reverse control and oversight by the Department of the Environment and Tourism through the mechanism of the National Environment Management Act, back to the Department of Minerals and Energy as it had been under *Apartheid*. Having brought about this reversal the mining corporations have not only demonstrated their power over the government, but also their cavalier attitude to matters concerning the environment.

Society cannot function within a poisoned environment. The single most destructive impact of mining is on the environment. A clean environment is the foundation of a healthy society. Mining corporations are not held accountable for many of the costs that their operations impose on society; those costs are borne by the state and by tax payers. The inordinate power which mining companies exert over the government derives from the government's inability to address questions of unemployment, poverty reduction, crime, the health and housing questions – in a word delivery - outside of the structural imperatives of the neo-liberal economic model it has adopted. Mining is seen as the vehicle, not only for the elitist empowerment model adopted, but also as the means for delivering on all the other challenges faced by government.

The extent of corporate social responsibility can also be measured by the fact that many mining operations across the country operate without water use licences, by the extent of struggles between communities and farmers on the one side and mining corporations on the other. Surely effective corporate social responsibility programmes addressing the impact of mining on communities would have seen far less of these clashes where corporations have to rely on the South African Police Services to impose themselves on communities. What the South African public is seeing on television is reminiscent of the forced relocations the Apartheid regime was so infamous for.

Sustainable Development

David Parry-Davies defines sustainable development as 'development that meets the needs of the present without compromising the ability of future generations to meet their own needs'. In effecting sustainable development in South Africa we must ask what our priorities are: Must we sustain 'profits at all cost'? Or, must we sustain the population and the country in long term?

Economical dimension

According to the Minister of Minerals and Energy, Buyelwa Sonjica, 'mining is the goose that lays the golden egg'. This assertion certainly holds true for the small BEE elite that has benefited either as 'juniors' with no interest in mining apart from prospecting, or those who have been brought on board as empowerment partners by the existing corporate mining giants. The 'juniors' negotiate prospecting rights from communities, obtain prospecting licenses from DME, and after teaming up with prospecting firms from Canada and Australia sell 'their' mineral rights to actual mining companies who then apply for mining licenses. The individuals in these 'junior' operations become instant billionaires.

For the communities of Maandagshoek, Mhlohlo Wakkerstroom, Belfast and elsewhere, mining brings with it pollution, illness, loss of land and income, alcoholism, prostitution, sexually transmitted diseases and HIV and Aids. Once the minerals are mined out, as in many parts of Gauteng, communities are left to contend with mine waste, derelict and dangerous buildings, acidic surface and ground water and nothing by way of sustainable economic activity.

No one in South Africa has yet done a relative cost analysis of mining in South Africa, meaning the economic cost of mining to agriculture, commerce and manufacturing, community health and well being, individual health and well being, the environment (air

pollution, water use and pollution, land use and pollution including waste management) etc.

The political economy of mining in South Africa would suggest that mining is indeed considered 'as the goose that laid the golden egg' by the South African government. Politicians and civil servants have used engagements with the industry for self-promotion. The research shows that key political and civil service figures have possibly used their strategic positions in government either as politicians or senior civil servants to get a foothold in the sector and to become super rich overnight.

Environmental dimension

Platinum mining In Limpopo

- Platinum mining is impacting severely on water use in Limpopo. Apart from the pollution of surface and ground water and massive water consumption, the damming up of rivers is resulting in the Commodification of water. Communities are already complaining about the drying up of wells, boreholes and fountains in a number of areas.
- Blasting at opencast mines is causing houses to crack and communities are losing valuable planting and grazing agricultural land.
- With the loss of land comes a loss in income and a redefinition of social roles. Where women went out to plough, plant and harvest for their households, they now go out to prostitute themselves to 'foreign' mine workers. Where men traditionally herded and looked after cattle they now find solace in shebeens and become alcoholics.
- Toxic mine dust from opencast operations, acid mine drainage (AMD) into surface and ground water and dust from rock and tailings facilities all have health implications for members of communities.

Coal mining in Mpumalanga

- Coal mining poses a major threat to the lakes district of Mpumalanga, to the Olifants River the Kruger National Park and ultimately to Mozambique.
- Coal used in the generation of electricity in South Africa poses an major risk in terms of air pollution.
- Coal dust and mine waste poses serious risks to both workers and to people living in surrounding mines.
- Open cast mines occur at the cost of the destruction of agricultural land

- Ground water pollution poses a serious threat to agriculture and communities dependent on wells, boreholes and springs.

Gold and Uranium Mining in Gauteng and the North West Province

- Gold and Uranium mining poses a threat to the Vaal and Mooi Rivers. The Crocodile River, the Hartebeespoort Dam, Wonderfontein Spruit are also at risk. Informal communities living along these rivers and communities face grave potential dangers as a result. It is suggested that the occurrence of birth deformities in these communities, as well as in the community of Reigerpark, may be associated with heavy metals in the water and air to the proximity of mine waste facilities, or the use of mine polluted water.
- Agriculture in the western and southwestern parts of Gauteng is potentially also at risk. Tests have already shown high levels of radiation in vegetables and milk in some areas, due to irrigation from both surface and groundwater sources polluted by mining.
- High levels of acid in ground water threaten the dolomitic foundation of many towns on the West Rand leading to sinkholes and land subsidence as a result of mining.
- The pumping out of ground water by mining companies have also affected boreholes of farmers.
- The puncturing of dykes have changed the flow of direction of groundwater causing fountains to dry up.
- Dust from tailings dams and waste facilities pose respiratory and cancer risks to nearby communities.

Social dimension

Mines do not very often employ local labour. Concerns for the productivity and profitability of an operation, dictates that mining companies employ experienced labour. Such labour is most easily derived from the old labour pools established by the system of Apartheid. While most corporations would claim that in line with the Mining Charter they prefer not to employ migrant labour, the fact that they continue to do so is hidden by the nefarious 'living out allowance and through sub-contracting.

Starting mining operations often cause complex divisions within communities between:

- Traditionalists and modernists
- Youth and the elderly
- Women and men

- Between communities and all spheres of government
- Between communities and institutions of government such as the police and the judiciary; and
- 'Natives' and 'settlers' (using Mahmood Mamdani's definitions of these terms) (2005).

Health and Safety

South African gold mines have an appalling safety record. Safety at both gold and platinum mines also showed a marked deterioration during 2007. The paper speculates that there might be a link between soaring commodity prices and therefore productivity pressures to maximise profits in the favourable market context.

There is currently an ongoing, precedent setting silicosis case raging in South Africa's courts. A High Court hearing to determine whether or not former mineworker *Thembekile Mankayi*, who was discharged after contracting silicosis, will be entitled to sue gold major AngloGold Ashanti for damages. Much of the proceedings centre around the relationship between two pieces of legislation: the Occupational Diseases in Mines and Works Act (Odimwa) and the Compensation for Occupational Injuries and Diseases Act (Coida).

AngloGold Ashanti's lawyers argued that, while the two had historically been viewed as two separate and unrelated acts, they should be read together as an interrelated package. Anglo hopes to escape its responsibility towards Mr Mankayi and thousands of others like him whose health have been destroyed on the mines.

Community Engagement

The section of the paper dealing with Limpopo shows that Anglo Platinum prefers dealing with communities through Section 21 Companies. Communities reject this approach stating that such companies are inherently undemocratic, unaccountable and corruptible. Mines in their social responsibility campaigns still fail to address the impact of mining on communities in all its complex manifestations.

Labour and Migrant Issues

The migrant labour issue, subcontracting and the living out allowance has already been discussed elsewhere in this summary, save to say that the living out allowance and

subcontracting are also major impeding factors to realising better mine safety, something to which Cynthia Carrol, Anglo American CEO, has agreed in a statement late in 2007.

ZAMBIA

The following critical challenges in the Zambian mining industry were revealed by the research:

- Despite proper regulation, bad environmental management and practices are like 'golden threats' throughout the mining industry in Zambia
- The small scale mining industry is surrounded by immense controversy with economical, technical, environmental and social dimensions; the controversy is mainly due to the concealed nature of gemstone mining
- It was evident – contrary to the view of mining companies – that major and detrimental socio-economic impacts resulted from the privatisation process of mines, e.g. loss of jobs, increasing levels of poverty, loss of benefits for retrenched miners, out migration of skilled people, growth of unplanned settlements, etc.
- Despite positive signs, engagement with and development of surrounding communities need serious attention; projects must be design to avoid potentially significant adverse impacts and frameworks must be established for facilitation, mediation and dispute resolution
- Bad environmental management and control in the mining environment as well as the poor social conditions in mining communities bring about or enhance quite serious health problems, e.g. TB, silicosis, Wilson's Disease, HIV/AIDS, etc.
- With bad environmental practices and poor community engagement in mind, mining companies have a long way to go before being recognised as responsible corporate citizens; CSI and CSR issues must be prioritised and practised
- Safety is a huge issue and challenge in Zambian mines (e.g. Kabwe is rated as one of the ten 'worst' places in the world); quite a lot of the safety problems seem to be related to the role of contract workers and the lack of training
- When looking at all the strikes and labour unrest, labour issues at the Zambian mines need to be revisited
- Although mainly an economic and "political issue", the question of the renegotiation of the 'development agreements' is a serious and contentious challenge and needs urgent attention – also on international level

- Lastly, but not least, the presence of the Chinese (companies as well as contract workers) is definitely a huge and controversial issue in the Zambian mining environment and needs serious consideration

Legislative Overview

Given the importance of the regulation of the industry as well as the indirect link between legislation and CSR, an overview of the regulatory framework of the sector was done by this research. The legislative framework for the mining industry in Zambia appears to be quite well structured, comprehensive and thorough, however, despite the well-conceived structure, implementation suffers from inadequate manpower to implement the various pieces of legislation and to realise the objectives of the various departments.

During the past few months on the Copperbelt, the discussions surrounding mining legislation have been dominated by the controversial issue of the 'Development Agreements' that were signed between the Zambian Government and the new investors (mining companies) during privatisation. The burning issue that has received most of the attention recently is the new tax and royalty regime that has been imposed on the companies by the government. The mineral royalty has increased to 3% from 0.6%, while corporate tax has risen to 30% from 25%.

Zambia has also introduced a 15 percent variable profit tax on taxable income above 8% and minimum 25 percent windfall profit tax has been enacted. From the beginning of April 2008, the mining companies were required to start paying these higher taxes. This has consequently outraged some mining firms who been exempted from paying taxes for as long as 20 years in some cases. The Chamber of Mines is of opinion that this will discourage direct foreign investments because investors will have no confidence in the government if it can not honour signed agreements. Nevertheless, it is believed that this new mining tax will generate a \$400 million in revenue per year and according to the Zambian government, additional resources from the new tax measures would enable the mineral-rich country to spend more on education and health and help achieve its aim to become a prosperous middle-income country by 2030

Corporate Social Responsibility

The concept of CSR has been applied only relatively recently in Zambia, although the term is seeing some application within policy debates. The privatisation of Zambia

Consolidated Copper Mines (ZCCM), which was actively encouraged by the donor community as a means of reducing corruption, inefficiency and waste, was supposed to bring new investment to the Copperbelt, reinvigorating the local economy and restoring its severely degraded and contaminated environment. In reality, despite all the talk about corporate social responsibility and sustainable development, the new mine owners have shown themselves remarkably reluctant to assist cash-strapped local councils to improve social service provision. They are even less inclined to shoulder some of the burden of cleaning up ZCCM's environmental legacy. Although the idea of corporate social responsibility (CSR) is gaining some importance within policy debates in Zambia, it is not applied widely and is usually associated only with philanthropy. The conclusion is that companies' CSR-related claims, and particularly the reference to a business case for voluntary CSR, need to be treated with caution.

Sustainable development

Economic dimension

Despite the economic success of the mining industry in the recent past, a majority of Zambians continue to suffer extreme poverty. As of December 2005, about 67% of the population was said to be living on less than US\$1 a day. The privatisation of Zambia's mines initially led to a loss of 8 000 jobs. It is estimated that the 8 000 individuals supported at least five other family members. Most of these unemployed miners resorted to economic activities like charcoal burning, shift cultivation farming methods and small-scale mining to sustain their livelihoods, leading to further environmental degradation. However, some jobs have been created in the mines through the use of contract work. But, this had led to a collapse in the quality of employment.

Approximately 45% of mine workers are unable to access permanent and pensionable contracts. Most mining companies have shifted workers onto rolling, fixed-term contracts on significantly less beneficial terms and conditions, or the jobs have been "contracted-out" to companies that pay in many cases less than half the monthly wage offered permanent workers for the same work in the same mine, and in some cases, just one tenth of this figure. This study also found a higher risk of corruption that is spreading through the use of 'contractors', e.g. mine workers having to pay some contractors up to 1 million Kwacha (R2000) to get a job in the mines. People also complain of payments coming late as well as lower health and safety standards that came as a result of sub-contracting. People feel that mining companies are sub-contracting the labour as a way of running away from their social responsibilities. Two other problems of privatisation is the

deepening of pensioner poverty, as well as the lack of linkages of the new companies to local business.

Environmental dimension

In Zambia, where mining provides for a large part of the country's economy, it has become necessary to create projects that consider their main focus to be the welfare of the environment. One of these important initiatives is the Copperbelt Environment Project (CEP) - it addresses the environmental liabilities associated with the mining sector that accumulated during more than 80 years of mining. Decades of copper, cobalt, zinc and lead mining has left many areas of the country contaminated with poisonous substances. Impacts include air pollution from fumes, gases and dust; soil contamination from hazardous effluents; water (surface and ground) pollution from effluents to water ways from mines, plants and dumps; destruction of vegetation and wildlife habitat due to subsidence; deforestation, fumes and direct health hazards. According to the Environmental Council of Zambia (ECZ) the mines in Zambia are mostly working with sulphide copper. Therefore, as a result of the mining process there is a lot of air pollution in the form of sulphur dioxide which consequently also leads to acid rain. There are many areas in Zambia where vegetation has stopped growing as a result of the pollution. People also complain of respiratory and other health problems that are caused by the pollution.

Social dimension

After the privatisation of Zambia's copper mines, the new investors (mining companies) have made little effort in the area of Corporate Social Responsibility. The mining companies made it clear that their "core business" is mining and not the provision of social amenities. The companies have consequently 'surrendered' a lot of infrastructure in the form of clinics and recreational facilities. Mining communities on the Copperbelt are experiencing a lot of problems with getting access to health care facilities, as well as other services. Infrastructure like roads, housing and basic necessities like water and sanitation are also huge problems identified by this study. As a result of a lack of employment and the huge decline in number of recreational facilities, social problems like alcohol abuse and prostitution also appears to be widespread.

Analysis

A summary of the findings reveals that corporate social responsibility in the mining communities is relatively ineffective in terms of facilitating sustainable development. In

fact, in most areas corporate social responsibility is either negligible or non-existent. Where corporate social responsibility directives exist, specifically pertaining to the environmental factors, substandard practices continue to persist. Communities continue to experience the consequence of the gaps between policy and practice, policy and human rights and practice and human rights, which impact heavily on the potential for sustainable development. Adding to this is that the Zambian mining environment is characterised by a fragmentation of responsibilities to the extent that it inhibits the benefits or effectiveness of any kind of CSR and efforts made towards sustainable development.

The effects of the fragmentation of developmental activities in the mining communities has resulted in differing expectations at all levels and raises issues of disempowerment as well as capacity concerns. The research revealed vast differences between expectations, perceptions and needs of the different role-players that are operating on the micro, meso and macro levels of society.

The only way to start an alignment process between these levels of expectations and the perceived responsibilities within the communities is to embark on a community engagement process aimed at mutual understanding and improved community relations. Even before any social or developmental problem in any of these communities can be addressed, serious efforts have to be made to start establishing common ground among the role players and to address the lack of trust and vast differences in expectations and perceptions that this survey has unveiled.

Community engagement initiatives, through participative communication programmes, linked to the mining companies' communication strategies are the vehicles that should be used to address the current lack of common ground and mistrust among the role-players.

Broadly speaking, improvements should come about as a result of better communication, integration and power relations within and among communities, implementing institutions and government. Acknowledgement of power and how it impacts on other role players is important because if it is not used well it can result in further exploitation of others. There are power struggles and lack of coordination within these institutions which can hamper development. Therefore to achieve effective change and sustainable development, these issues have to be addressed and dealt with. However, it is important that the Zambian government takes a leading role in achieving these objectives, as this is its legitimate role to protect the rights of its citizens. The aim should be to get a better understanding of each of the role players' needs and to then work towards supporting each other. It is also

important to note that, at this stage, most communities are focussing on basic needs and therefore may not be full partners to the sustainable development agenda.

There are extreme social problems in the communities and the perception in the communities is that most of the problems are caused by the mines and their operations, as well as by government's passive nature during all of this. Therefore the solutions, according to the communities, are the corporate social responsibility of the mines, but also the responsibility of government entities. The vast differences between perceptions and expectations mean that this study represents the start of a long-term process; in this process the aligning of the actions and expectations of all relevant role-players in the quest for sustainable development in the mining companies' neighbouring communities must be a priority.

Conclusion

As a conclusion it can be stated that in a regulatory sense, it seems that the industry in the SADC region - with the exception of Malawi - is embedded in a thorough, clear and well regulated legislative framework. However, the implementation and monitoring of these policies seem to be problematic. Serious environmental problems exist throughout the region and health, safety and labour issues are quite a threat to the mining environment and present huge challenges to the industry. For the industry to be successful in the long term, they need to obtain the support of the communities in which they operate. Sound relationships and cooperation between the different stakeholders (mining companies, donor organisations, government and communities) is essential for the sustainability of the mining sector in the SADC region, where human rights continue to take second place to profitability whilst corporate social responsibility remains a theoretical aberration. Issues relating to poor governance and poor resources in terms of human and financial capacity appear to be the major cause for these continued practices. The implications are that CSR driven development is rendered ineffective unless governments take the necessary steps to overcome these limitations.

RELEVANT DEFINITIONS

Corporate Social Responsibility: *is the responsibility of an organisation for the impacts of its decisions and activities on society and the environment through transparent and ethical behaviour that: is consistent with sustainable development and the welfare of society; takes into account the expectations of stakeholders; is in compliance with applicable law; and is consistent with international norms of behaviour that are integrated throughout the organisation (Working definition, ISO 26000 Working Group on Social Responsibility, Sydney, February 2007).*

Sustainable development: *is development which meets the needs of the present without compromising the ability of future generations to meet their own needs. Three dimensions of sustainable development have been identified as economic, social and environmental (World Commission on Environment and Development, "Our Common Future", 1987).*

Stakeholders: *are people or institutions that are affected, or might be affected, by an organisation's activities. Likewise, stakeholders can, in return, affect the activities of that organisation (WBCSD). One should also realise that there are others with a burning interest in mining company activities who may not seem to be actually affected by the company's actions but who should also be included in the stakeholder grouping. This could mean Non-Government Organisations (NGOs) who are not even present in the country where the mining is taking place and who seem to have no tangible connection to the operation or its activities (MMSD, 2002).*

Mining communities: *"...where the population is significantly affected by a nearby mining operation. The community may be associated with the mining venture through direct employment or through environmental, social, economic or other impacts. The community can range in size from a city to a village..." (Veiga et al.2001).*